STATE OF SOUTH CAROLINA	)	IN THE COUR OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	C/A NO.: 2023-CP-26-06249
	)	
Horry-Georgetown Technical College,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Claycon Pharma Conway RE, LLC, Pathway Treatment Center, LLC, Pathway Clinic LLC, and City of Conway,	)	
	)	
Defendants.	)	

ORDER GRANTING DEFENDANTS CLAYCON PHARMA CONWAY RE, LLC, PATHWAY TREATMENT CENTER, LLC, AND PATHWAY CLINIC, LLC'S MOTION TO DISMISS, OR JUDGMENT ON THE PLEADINGS

Defendants Claycon Pharma Conway RE, LLC, Pathway Treatment Center, LLC, and Pathway Clinic LLC ("Defendants"), moved for an Order dismissing Plaintiff's Amended Complaint ("Complaint"). The matter was before the Court via WebEx on Tuesday, March 26, 2024, at 9:30 a.m. For the reasons below, Defendants' Motion to Dismiss is GRANTED.[1]

I. BACKGROUND

Defendants have received a Certificate of Need from SC DHEC, to operate an opioid treatment center at 1800 Husted Road, in Conway, SC.[2] Importantly, Plaintiff has not named SC DHEC as a Defendant in this action. Plaintiff seeks a legal determination that the Certificate of Need should not have been issued under state law, nor can Defendants proceed under Defendant City of Conway's Ordinances. Plaintiff's case is premised on its belief that it is a "secondary

[1] Although Defendant City of Conway did not file a Motion to Dismiss, it stated at the beginning of the hearing that it joined with Defendants' Motion to Dismiss, and that the Court's ruling would be dispositive as to any claims against the City of Conway, as well.
[2] Complaint, Paragraph 4. All references to Complaint herein are to the Amended Complaint.

school" under either state law, or the City of Conway's Ordinances, and as such, there is a mandatory spacing requirement between Defendants' location and Plaintiff's property.

Plaintiff: (1) alleges and makes the legal conclusion that it is a "secondary school" under South Carolina law; and (2) asks the Court to declare it a "secondary school" so that Plaintiff can obtain its requested relief. The first is not true, and therefore the Court cannot do the second.

Plaintiff cites S.C. Code Ann. Regs. 61-93.2624, as controlling authority.[3] Subsection (D) states:

> D. Facilities providing an Opioid Treatment Program shall not operate within five hundred (500) feet of:
> 1. The property line of a church;
> 2. The property line of a public or private elementary or ***secondary school***;
> 3. A boundary of any Residential district;
> 4. A public park adjacent to any Residential district; or
> 5. The property line of a lot devoted to Residential use. (Emphasis added.)

Title 59 of the South Carolina Code, is "Education." S.C. Code Ann. 59-1-150, entitled "'Kindergarten,' 'elementary school,' 'middle school,' 'secondary school,' 'junior high school,' and 'high school' defined," states:

> For the purposes of this chapter:
> (1) "Kindergarten" means any school which provides either education, instruction, or supervision below the first grade to children who will attain the age of five on or before the first day of November of the school year when they begin school.
> (2) "Elementary school" means any public school which contains grades no lower than kindergarten and no higher than the eighth.
> (3) "Middle school" means any public school which contains grades no lower than the fifth and no higher than the eighth.
> (4) "Secondary school" means either a junior high school ***or a high school***.
> (5) "Junior high school" shall be considered synonymous with the term "high school."

[3] Complaint, Paragraph 14.

> (6) "High school" means any public school which contains grades no lower than the seventh ***and no higher than the twelfth***. (Emphasis added.)

In its Complaint, Plaintiff alleges it "operates two secondary educational facilities," at 250 Allied Drive, and 2050 U.S. 501.[4] Then, in Paragraphs 27, 33, and its Prayer for Relief, Plaintiff asks the Court to declare Plaintiff a "secondary school" under state law, and the City of Conway's Ordinances.

In Defendant City's Unified Development Ordinance ("UDO"), Section 5.1.32(3)(b), an outpatient treatment facility such as the one planned by Defendants, cannot be located within 1,000 feet of an "educational facility." Per Section 2.2.1 of that same UDO, an "educational facility" is defined as one meeting the "state requirements for elementary and secondary education," which is discussed above.

Plaintiff's entire case is predicated upon its legal conclusion, or request, that it be declared a secondary school under state and local law. Plaintiff is not a secondary school under state or local law. Thus, the Court cannot grant Plaintiff's requested relief as a matter of law.

II. LAW

A. Statutory Construction

The matters before the Court are issues of statutory construction and standing, both of which are solely matters of law for the Court to decide. *See, e.g., Boiter v. South Carolina Dept. of Transp.*, 393 S.C. 123, 712 S.E.2d 401 (2011) ("Questions of statutory construction are a matter of law."); *Charleston Cty. Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d

[4] Complaint, Paragraph 1. It does not appear that either location is within 500 feet of Defendant's property, but that specific issue is not before the Court in this Motion to Dismiss.

841, 843 (1995) ("The determination of legislative intent is a matter of law."); *Carnival Corp., et al. v. Historic Ansonborough Neighborhood Ass'n,* 407 S.C. 67, 753 S.E.2d 846, (2014); *Roundtree Villas Ass'n, Inc. v. 4701 Kings Corp.,* 282 S.C. 415, 321 S.E.2d 46 (1984) ("The trial judge should have held as a matter of law that [plaintiff] had no standing to sue....").

In deciding a motion to dismiss, the trial court should consider only the allegations set forth in the Complaint. *Plyler v. Burns, et al.*, 373 S.C. 637, 647 S.E.2d 188 (*citing Stiles v. Onorato,* 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995). A 12(b)(6) motion should not be granted if "facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." *Id.* The question is whether, in the light most favorable to the Plaintiff, and with every reasonable doubt resolved in its behalf, the Complaint states any valid claim for relief. *Id.* (*citing Toussaint v. Ham,* 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987)).

However, these requirements only apply to "well pled facts," and the Court is not bound to admit all inferences drawn by Plaintiff, or Plaintiff's mere conclusions of law. In fact, allegations that are conclusory rather than factual should be disregarded. If a fact is well pled, inferences or conclusions **that may properly arise** therefrom can be deemed true. *Crowe v. Domestic Loans, Inc.*, 242 S.C. 310, 130 S.E.2d 845 (1963) (emphasis added). While a pleading under attack must be liberally construed so that substantial justice is done between the parties, substantial justice is done when inadequate pleadings seeking relief that cannot be obtained are summarily dismissed. *See Moore v. City of Columbia*, 284 S.C. 278, 326 S.E.2d 157 (Ct. App. 1985). Stated another way, where the allegations of the complaint fail to adequately allege a valid or complete cause of action or support a reasonable inference of judgment, judgment upon the pleadings is proper. *See e.g., Lydia v. Horton,* 355 S.C. 36, 583 S.E.2d 750 (2003).

The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature." *Bryant v. State,* 384 S.C. 525, 529, 683 S.E.2d 280, 282 (2009). All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used. *State v. Sweat,* 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010).

Where a statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Gay v. Ariail,* 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009). Courts must reject a statutory interpretation that would defeat the plain legislative intention. *See Unisun Ins. Co. v. Schmidt,* 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000). Once the legislature has made choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy. *South Carolina Farm Bureau Mut. Ins. Co. v. Mumford,* 299 S.C. 14, 19, 382 S.E.2d 11, 14 (Ct.App.1989).

What a legislature says in the text of a statute is considered the best evidence of legislative intent or will. *Bayle v. South Carolina Dep't of Transp.,* 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001). The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction. *Durham v. United Cos. Fin. Corp.,* 331 S.C. 600, 503 S.E.2d 465 (1998); *Adkins v. Comcar Indus., Inc.,* 323 S.C. 409, 475 S.E.2d 762 (1996); *Worsley Cos. v. South Carolina Dep't of Health & Envtl. Control,* 351 S.C. 97, 102, 567 S.E.2d 907, 910 (Ct. App. 2002); *see also Timmons v. South Carolina Tricentennial Comm'n,* 254 S.C. 378, 175 S.E.2d 805 (1970) (Where the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it that are not in the legislature's language.) Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous

statute. *Hodges v. Rainey,* 341 S.C. 79, 533 S.E.2d 578 (2000); *Bayle,* 344 S.C. at 122, 542 S.E.2d at 739.

This case also requires the Court to review a SC DHEC regulation, and an Ordinance of Defendant City. But the legal analysis of those is the same as the Court must use for statutory construction. Regulations are interpreted using the same rules of statutory construction. *Murphy v. S.C. Dep't of Health & Envtl. Control*, 396 S.C. 633, 639, 723 S.E.2d 191, 195 (2012). Ordinances are also subject to the standard rules of statutory construction. *Olds v. City of Goose Creek*, 424 S.C. 240, 818 S.E.2d 5 (2018).

Plaintiff, a college,[5] certainly has grades higher than twelfth. Plaintiff does not in any way allege or argue that it does not have grades "no higher than the twelfth." The express terms of S.C. Code Ann. 59-1-150 do not include a college within its definition. In fact, the South Carolina General Assembly used words that expressly exclude any institutions of higher learning, such as Plaintiff, from the definition of "secondary school." This Court clearly must assume that the General Assembly chose its words carefully, and the language it used is clear and unambiguous. The South Carolina General Assembly excluded Plaintiff and other colleges by saying that a secondary school cannot have grades higher than twelfth. Legislative intent is clear in this case.

Although not important to the Court's decision, Plaintiff's website states Plaintiff is a "two-year community/technology college," and that since its founding, has provided "post-secondary" programs. So even Plaintiff does not hold itself out as a "secondary school;" it holds itself out as a college, and "post-secondary" school. Therefore, there is no set of allegations plead or argued

[5] See Plaintiff's Memorandum of Law, Page 1, and of course, Plaintiff's name.

by Plaintiff that would in any way allow it to be classified as a "secondary school" under state law, and therefore it is not entitled to the spacing requirements in S.C. Regs. Ann. 61-93.2624.

The same logic applies to Defendant City of Conway Ordinances. In its Unified Development Ordinance ("UDO"), Section 5.1.32(3)(b), an outpatient treatment facility such as the one planned by Defendants, cannot be located within 1,000 feet of an "educational facility." Per Section 2.2.1 of that same UDO, an "educational facility" is defined as one meeting the "state requirements for elementary and secondary education," which is discussed above. Therefore, Defendant City's Ordinances also do not allow any relief for Plaintiff.

The Court applauds Plaintiff's dual enrollment program, and has no doubt it provides wonderful opportunities for students who are able to attend. But simply allowing high school students to get a taste of the college experience, and take some college-level classes on Plaintiff's campus, does not make Plaintiff a "secondary school" under state or local law.

Even if "college" is not defined in the statutory scheme discussed above, any reasonable and common definition of "college" would include "higher learning," meaning including grades higher than the twelfth. When faced with an undefined term, the court must interpret the term in accord with its usual and customary meaning. *Strother v. Lexington County Recreation Comm'n,* 332 S.C. 54, 504 S.E.2d 117 (1998); *Adoptive Parents v. Biological Parents,* 315 S.C. 535, 446 S.E.2d 404 (1994); *Hudson,* 336 S.C. at 246, 519 S.E.2d at 581; *see also Santee Cooper Resort v. South Carolina Pub. Serv. Comm'n,* 298 S.C. 179, 184, 379 S.E.2d 119, 122 (1989). Again, Plaintiff does not allege or argue that it only has grades twelfth or lower. Doing so would defy logic.

B. Standing

In addition to the statutory construction analysis above, Plaintiff lacks standing to bring this action. In its Complaint and Memorandum of Law in Opposition to Defendant's Motion to Dismiss, Plaintiff states it hosts "students from various high schools throughout the County."[6] Thus, Plaintiff admits these are high school students. It is important to note the Horry County School District is not a party to this lawsuit. Plaintiff does not allege that it gives diplomas to those students. While those students take some classes at Plaintiff's campus, those students are Horry County School District students, and Plaintiff still has grades higher than twelfth.

Standing to sue is a fundamental requirement in filing an action. *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999). For a party to have standing, three elements must be satisfied. First, the plaintiff must have suffered an injury-in-fact which is a concrete, particularized, and actual or imminent invasion of a legally protected interest. *Sea Pines Ass'n for the Prot. of Wildlife v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 600–01, 550 S.E.2d 287, 291–92 (2001). Second, a causal connection must exist between the injury and the challenged conduct. *Id.* Third, it must be likely that a favorable decision will redress the injury. *Id.* Plaintiff does not satisfy the first element. Because Plaintiff has grades higher than twelfth, Plaintiff at best alleges only a generalized grievance suffered by the public as a whole, or an injury that may be suffered by another entity, and fails to allege any particularized harm to itself that is allowed relief under the law.

Standing may be acquired: (1) by statute; (2) under the principle of "constitutional standing; or (3) via the "public importance" exception to general standing requirements.

[6] See Plaintiff's Memorandum of Law, Page 1.

Freemantle v. Preston, 398 S.C. 186, 192, 728 S.E.2d 40, 43 (2012). In its Motion to Reconsider, Plaintiff alleges it has standing under the "public importance" exception.[7]

South Carolina courts recognize an exception to the requirement that a plaintiff possess standing where "an issue is of such public importance as to require its resolution for future guidance. *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n, et al.*, 407 S.C. 67, 753 S.E.2d 846 (2014) (*citing Davis v. Richland Cnty. Council,* 372 S.C. 497, 500, 642 S.E.2d 740, 741 (2007)). Whether the exception applies in a particular case turns on whether resolution of the dispute is needed for "future guidance." *ATC South, Inc. v. Charleston Cnty.,* 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008). Importantly for the case at hand, if the claims asserted by Plaintiff "could be brought by other parties who can show the required injury," Plaintiff does not have standing. *See Carnival Corp.,* 407 S.C. at 81.

The Horry County School system, as having grades no higher than twelfth, might be a possible party that may be able to show the required injury to confer standing. However, as stated above, it is not a party to this action. With no injury suffered by Plaintiff that can be afforded relief under the law, Plaintiff lacks standing.

III. PLAINTIFF'S CAUSES OF ACTION

Plaintiff's First Cause of Action requests a declaratory judgment that the spacing requirement in Defendant City's Code of Ordinances preempts the spacing requirement under state law. Because Plaintiff is not protected by either spacing requirement, Plaintiff seeks an advisory opinion from the Court. Courts do not issue advisory opinions. *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 593 S.E.2d 462 (2004).

[7] Plaintiff is not an association, and does not allege associational standing.

Plaintiff's Second Cause of Action asks the Court to declare Plaintiff entitled to the spacing protection under Defendant City's Code of Ordinances. Plaintiff's Third Cause of Action seeks a declaratory judgment that any variance granted by Defendant City either was not granted, or if granted, was unlawful. The discussion above shows that neither is possible based on the clear and unambiguous language in the applicable ordinances.

Plaintiff's Fourth Cause of Action asks for a declaratory judgment declaring that Plaintiff is a secondary school under state law. As discussed above, the Court cannot grant this requested relief based on clear statutory language.

Plaintiff's Fifth Cause of Action asks for a declaratory judgment as to the spacing requirement under state law. Because the Court has already ruled that Plaintiff is not a secondary school under state law, this would be another advisory opinion.

Plaintiff's sixth cause of action asks for an order enjoining the establishment of any opioid treatment center on Defendants' property. Defendant has not shown it is entitled to any relief under its Complaint; therefore, any type of injunctive relief would be improper for the Court to consider.

Finally, Plaintiff's seventh cause of action asks for attorney's fees and costs under S.C. Code Ann. 15-53-100. Because Plaintiff was not the prevailing party, this cause of action is moot.

IV. CONCLUSION

The Court is very mindful of the issues involved in this case, and their sensitive nature. However, the law is clear and unambiguous, which leaves the Court no ability to rule otherwise. If the South Carolina General Assembly chooses to change the definition of "secondary school"

under state law, it is obviously free to do so. However, this Court is bound to defer to the intent of the General Assembly as proclaimed by the words used in its statutes.

"Courts are limited to resolving cases and the powers inherent in that function. Courts are not bodies for the resolution of public policy and generalized grievances." *Id.* Generalized harm, as alleged here, is to be remedied by the legislative and executive branches. "If existing laws and regulations or their enforcement fail to protect the public from harm, it is incumbent upon the public to seek reform through their elected officials or failing that, at the ballot box." *Id.*

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendants' Motion to Dismiss is granted, and Plaintiff's Amended Complaint be dismissed with prejudice.[8]

IT IS SO ORDERED!

[PREPARED FOR ELECTRONIC SIGNATURE]

[8] Plaintiff generically asked the Court at the hearing whether it could amend the Complaint. In its Motion to Reconsider, Plaintiff makes the same generic request. However, at no point has Plaintiff presented to the Court any proposed changes that would cure the identified deficiencies. *Paradis v. Charleston C'nty School Dist. et al.*, 424 S.C. 603, 819 S.E.2d 147 (Ct. App. 2018), *rev'd on other grounds* (*citing Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 632, 743 S.E.2d 808, 812 (2013) ("A motion to amend is within the sound discretion of the trial judge and the opposing party has the burden of establishing prejudice.")) Here, the issue is futility. Futility is a main reason for denying the opportunity to amend. Even though not made by Plaintiff, a trial court may deny a motion to amend if the amendment would be clearly futile. *See Jennings v. Jennings*, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010), *rev'd*, 401 S.C. 1, 736 S.E.2d 242 (2012) ("Although leave to amend should generally be 'freely given,' ... it may be denied where the proposed amendment would be futile.") *Skydive Myrtle Beach, Inc. v. Horry Cty.*, 426 S.C. 175, 826 S.E.2d 585 (2019). Plaintiff has not offered any allegations or facts to show that it does not contain grades higher than twelfth. Therefore, any motion to amend would be futile.

Horry Common Pleas

Case Caption: Horry Georgetown Technical College VS Claycon Pharma Conway Re LLC , defendant, et al

Case Number: 2023CP2606249

Type: Order/Other

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148